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In the

Supreme Court of the United States

OCTOBER TERM, 1981

DONALD PETERS, ROBERT T. SIMPSON, JR., WAREHOUSE, MAIL ORDER, OFFICE, TECHNICAL AND PROFESSIONAL EMPLOYEES, LOCAL 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Petitioners,

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Question Presented

Whether a state court's refusal to enforce a valid, pre-existing collective bargaining agreement based upon the court's application of a new state law constitutes an impairment of the obligation of the contract within the meaning of Article I, Section 10, Clause 1 of the Constitution of the United States?

Parties In The Supreme Court of Illinois

The parties in the Supreme Court of Illinois were Donald Peters, et al (petitioners in this Court)* and Health and Hospitals Governing Commission of Cook County (Respondent in this Court).

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* In addition, the following parties are also petitioners in this Court and were parties in the Supreme Court of Illinois:

Robert T. Simpson, Jr., Warehouse, Mail Order, Office, Technical and Professional Employees, Local 743, I.B.T.

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SUPREME COURT OF THE UNITED STATES

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No.

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Petitioners,

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Donald Peters, et al., pray that a writ of certiorari issue to review the decision of the Supreme Court of Illinois entered on December 18, 1981, insofar as it refused to enforce a valid public employee collective bargaining agreement. The Supreme Court of Illinois denied petitioner's Petition For Rehearing on January 29, 1982.

Opinions Below

The opinion of the Illinois Supreme Court is reported at 88 Ill.2d 316, 430 N.E.2d 1128 and reprinted at App. A. The opinion of the Illinois Appellate Court is reported at 91 Ill. App. 3d 1104, 415 N.E.2d 653 and reprinted at App. B. The order of the Circuit Court of Cook County is unpublished and reprinted at App. C.

Jurisdiction

The Illinois Supreme Court on December 18, 1981 applied a new state law to a valid, pre-existing public employee collective bargaining agreement and refused to enforce the agreement. A petition for rehearing was denied on January 29, 1982. On application of petitioners, Justice Stevens extended the time for filing a petition for a writ of certiorari to May 13, 1982. This Court has jurisdiction pursuant to 28 U.S.C. §1257(3).

Provisions Involved

Article I, Section 10, Clause 1 of the United States Constitution provides in pertinent part as follows:

> No state shall . . . pass any . . . Law impairing the obligation of contracts . . .

The Illinois County Hospitals Act, Pub. Act 81-1197, *Ill. Rev. Stat.* ch. 34 §5020, provides in pertinent part:

> The Board of Commissioners (Cook County) shall have and exercise all rights, powers and duties heretofore exercised by the Commission. (Health and Hospitals Governing Commission of Cook County). All books, records, papers, documents, property, real and personal unexpended appropriations and pending business in any way pertaining to the rights, powers and duties of the Commission shall be trans-

> ferred and delivered to the Board of Commissioners. All rights, duties and obligations of the Commission shall become the rights, duties and obligations of the Board of Commissioners.

The Health and Hospitals Governing Commission Act, Pub. Act 76-32, which was amended in part and repealed in part by the County Hospitals Act, *supra*, provided in pertinent part at Section 10:

> The Commission, (hospital commission) as agent to the county in which the Commission exists and without further authorization from that county or the Board of Commissioners thereof, shall have and exercise on behalf of that county, the following powers: . . . to establish and enforce policies regarding the use, operation and management of hospitals and health facilities under its authority; . . . to make and enter into contracts to accomplish any or all of its purposes ; . . . .
>
> As agent for the county, the Commission shall fix all salaries, wages or other compensation, or benefits and working conditions of all employees, including physicians, or other persons performing services for the Commission.

Statement Of The Case

In 1971, Petitioner, Local 743, IB of T (hereinafter the Union), and Health and Hospitals Governing Commission of Cook County, Respondent (hereinafter the hospital commission), pursuant to an enabling statute and appropriate case law entered into a valid election agreement allowing employees to vote upon exclusive collective bargaining representation and subsequent negotiation of

a collective bargaining agreement.[1] Such an agreement was needed, because Illinois public employees, unlike those in a majority of the states, do not have statutory rights to file union representation election petitions and engage in collective bargaining.[2] The election agreement covered the security guards at Cook County Hospital.

Under the election agreement, if the union established by an election that it represented a majority of the employees in the bargaining unit, the hospital commission agreed to bargain in good faith concerning the employees' wages, hours and working conditions. In exchange for this agreement to bargain in good faith, the union agreed not to strike during the term of any collective bargaining agreement or pending the resolution of collective bargaining disputes. If the parties could not agree upon a collective bargaining agreement after a reasonable period of negotiations, either could refer unresolved matters to a fact finder to make nonbinding recommendations to re-

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[1] *Health and Hospitals Governing Commission Act*, Public Act 76-32, effective July 1, 1969; *Tobin* v. *Health and Hospitals Governing Commission of Cook County*, 66 Ill. App.3d 564, 384 N.E.2d 77 (1978); *Classroom Teachers Association* v. *Board of Education of United Township High School Distric No. 30, East Moline, Illinois*, 15 Ill. App.3d 224, 304 N.E.2d 516 (1973); *Chicago Division of Illinois Education Association* v. *Board of Education of City of Chicago*, 76 Ill. App.2d 456, 222 N.E.2d 243 (1966);

[2] See appendix E for a list of those states which have provided statutory collective bargaining to public employees. In 1981, the Illinois legislature gave school district employees a right to file representation election petitions with the regional superintendent of schools, but did not compel collective bargaining if the unions won the elections. Pub. Act 82-107; Ill. Rev. Stat. ch. 122 §§13-14.24, 10-22.4(a) and 10-22.40(a).

solve the differences. The primary obligations of the agreement to bargain in good faith and refrain from economic action terminate upon the occurrence of either of two events: the failure of the parties to comply with an arbitration award or the loss of the union's majority status. The hospital commission may initiate a decertification election if it believes on the basis of objective[3] evidence that the union no longer represents a majority of the employees.

These principles of exclusive representation, bargaining in good faith, resolution of negotiation disputes and termination of the collective bargaining relationship upon the union's decertification are firmly rooted in the tradition of American labor relations as established in the National Labor Relations Act, as amended, and comprehensive public employee collective bargaining laws passed by various states.[4]

In an election conducted in 1971 under the election agreement, a majority of the hospital's guards selected the union to represent them for the purpose of collective bargaining; between 1971 and 1980 three (3) consecutive 3-year collective bargaining agreements were negotiated peacefully and without strike between the parties. These agreements as distinguished from the ground rules of the election agreements provided for the wages, hours and working conditions of the security guards.

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[3] The decertification election procedure is patterned on the model created by the National Labor Relations Act, as amended, 29 U.S.C. §159; *Brooks* v. *NLRB*, 348 U.S. 96 (1954); *NLRB* v. *Gallaro*, 419 F.2d 97, 100 (2d Cir. 1969)

[4] 29 U.S.C. §151, et. seq.; Bok and Dunlop, *Labor and the American Community*, 207-28 (1970); Wellington and Winter, *The Unions and the Cities*, 83-96 (1971); See also App. E.

In November, 1979, the Illinois General Assembly passed the County Hospital's Act, Public Act 81-1197, Ill. Rev. Stat. ch. 34 §5011, et. seq., which amended in part and repealed in part the County Hospital's Governing Commission Act. The new law dissolved the Health and Hospitals Governing Commission of Cook County and transferred to the Cook County Board of Commissioners the statutory responsibility to operate the largest public hospitals in the midwest (Cook County and Oak Forest Hospitals located in Chicago and nearby Oak Forest, Illinois) providing health care to the indigent. The new statute gives the Cook County Board authority to determine compensation, benefits and working conditions of the hospital employees. Under the former County Hospital's Government Commission Act, the hospital commission had statutory responsibility to operate the hospitals, appoint staff, determine compensation, benefits and working conditions, and enter into contracts.

Shortly after this new law passed and upon expiration of the third consecutive collective bargaining agreement between the hospital commission and the Union, the Board of Commissioners of Cook County terminated without reason the collective bargaining election agreement and declined to recognize the Union for future purposes of collective bargaining.[5]

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[5] In the Illinois Supreme Court, one other union, Hospital Employees Labor Program of Metropolitan Chicago (H.E.L.P!) which represents other employees at Oak Forest and Cook County Hospitals, along with petitioner, Local 743, I.B. of T, prosecuted consolidated cases concerning the County Board of Commissioners' termination of their respective collective bargaining election

The Union's complaint to enforce the collective bargaining election agreement was dismissed by the Circuit Court of Cook County. The Appellate Court of Illinois reversed and found the collective bargaining election agreement was not terminable at will and was an enforceable obligation which transferred to the Board of Commissioners of Cook County pursuant to the County Hospitals Act. Although the federal constitutional question of impairment of contracts was raised in the petitioners' brief to the Appellate Court of Illinois, the court did not consider it. The court wrote: "The remaining arguments relative to constitutional prohibitions against impairment of contracts need not be considered in view of the result mandated by the foregoing discussion." 91 Ill. App.3d at 1111, 415 N.E.2d at 658.

The state supreme court reversed the appellate court's decision and declined to enforce the election agreement. It stated the issue without specifically referring to petitioners' federal constitutional impairment assertion:

> The narrow question presented is whether, because section 10 of the County Hospitals Act provides that the duties and obligations of the Commission shall become the duties and obligations of the Board, the defendants (Respondent) can be required to negotiate in accordance with the prayer of the complaints. 88 Ill. 2d at 318, 430 N.E.2d at 1130.

The court interpreted the County Hospitals Act as precluding it from ordering the County Board to recognize

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[5] (Continued)
agreements. However, while the case was pending in the Illinois Supreme Court, the Board of Commissioners entered into collective bargaining negotiations with this other union which has chosen not to join in the petition for a writ of certiorari.

and bargain with the union, thereby impairing the contractual obligations.

The Questions Are Substantial

The questions presented by this petition are substantial, and they warrant the attention of this Court. They are:

1. The impairmant of a public employee collective bargaining contract is an issue of federal constitutional law not yet decided by this court.

2. Because collective bargaining in states without comprehensive public sector collective bargaining laws, such as Illinois, is based solely upon voluntary agreements between the employers and employee representatives, the Illinois Supreme Court's decision undermines the very heart of such public sector labor relations.

3. The Illinois Supreme Court's application of the new statute impairs the collective bargaining election agreement and contravenes controlling constitutional principles decided by this court.

Issue of Federal Constitutional Law Not Yet Decided By This Court

This Court has never decided whether a state can impair a collective bargaining agreement by declining to enforce a valid commitment to recognize and bargain with a public employees' representative. It has, however, considered contract claims of public employees whose employment contracts have been impaired by subsequent state law. *Indiana, ex rel., Anderson* v. *Brand*, 303 U.S. 95 (1938); *Hall* v. *Wisconsin*, 103 U.S. 5 (1880). In *Brand*, a township school teacher's contract created by a state tenure act was impaired by a subsequent

statute which removed tenure protection from township school teachers. This Court reversed the state supreme court's decision upholding the statute. The Court has, therefore, applied the contract clause to individual public employee contracts with public employers. *A fortiorari*, the contract clause also applies to collective agreements with public employers covering their employees.

Collective bargaining among states and local governments and their employees has increased substantially within the past twenty (20) years.[6] The relationship between contract clause constitutional principles and public employee collective bargaining agreements is presented by this petition and warrants this Court's attention.

The Effect Of The Court's Decision Is To Destroy Public Sector Collective Bargaining

The union and hospital commission created a system of exclusive representation based upon fundamental principles of American collective bargaining established in the representation section of the National Labor Relations Act, 28 U.S.C. §159. In Illinois public employers have created work place democracy and public employee representation by conducting representation elections and engaging in collective bargaining in the absence of a comprehensive collective bargaining statute.[7] Recognition or election agreements similar to the one involved in this case are used to achieve these goals.

The Illinois Supreme Court has refused to provide any contract remedy by applying the County Hospital's

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[6] *See*, generally, *Wellington* and *Winter*, *supra*, n. 4.

[7] *See* cases cited at n. *1*, supra.

Act. The decision has destroyed a fair and harmonious system of public employee bargaining that has existed for ten years. This result deprives the union and employees of their contractual property rights and proper expectation for contract enforcement under the Illinois law allowing collective bargaining in the absence of the statute.

The Contract Clause Protects Employee Rights Created By Contract

This Court has jurisdiction to review the Illinois Supreme Court's decision because the County Hospital's Act has been applied in a manner that impairs the collective bargaining election agreement. *Georgia Railway and Power Co.* v. *Decatur*, 262 U.S. 432, 439 (1923); *Columbia Railway, Gas and Electric Co.* v. *South Carolina*, 261 U.S. 236, 244-45 (1923); *Detroit United Railway* v. *Michigan*, 242 U.S. 238, 246-48 (1916); *Louisiana Railway and Navigation Co.* v. *Behrman*, 235 U.S. 164, 170-71 (1914); *Louisiana ex rel. Hubert* v. *Mayor of New Orleans*, 215 U.S. 170 (1909). By holding that the Cook County Board of Commissioners pursuant to the County Hospitals Act, has the authority to determine without consultation and discussion with the union, compensation, benefits and working conditions of the security guards, the Illinois Supreme Court has declined to enforce an agreement providing for employee representation and mutual discussions concerning compensation, benefits and working conditions. Under the court's opinion, the transference of governing power from the hospital's commission to the Cook County Board renders unenforceable the election agreement notwithstanding the terms of the County Hospital's Act preserving all existing obligations.

A state court's interpretation of a subsequently enacted statute and impairment of a pre-existing contract is constitutionally infirm as a violation of Article I, Section 10, Clause I of the Constitution of the United States. *Columbia Railway, Gas and Electric Co.* v. *South Carolina, supra; Detroit United Railway* v. *Michigan, supra.* In *Detroit United Railway,* this Court wrote:

> . . . [t]he jurisdiction of this court does not depend upon the form to which the legislative action is expressed, but rather its practical effect in operation as construed and applied by the state court of last resort, and this, irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is based upon the subsequent legislation. 242 U.S. at 247.

The specific legislative enactment does not have to refer to the contract which has been effectively impaired by the state court's decision. In *Georgia Railway and Power Co.* v. *Decatur, supra,* a state statute which did not refer to a contract setting transit rates was held to impair the obligation of the contract. The statute extended the corporate limits of the town and was construed by the state supreme court as having the effect of rendering applicable to the additional territory maximum street and railway rates affixed by the earlier contract. Even though the statute did not specifically refer to the contract or in terms make the strict railway rates applicable to the annexed territory, the necessary result of the state court decision was to give it that effect. Therefore, the statute substantially impaired the obligation of the contract. Even though the County Hospital's Act does not specifically refer to the collective bargaining agreement, the application of it by the Illinois Supreme Court acts as an impairment in violation of the contract clause.

Section 10 of the County Hospital's Act is a broad statement transferring authority, rights and obligations from the hospital commission to the Cook County Board. Its predecessor specified the duties and powers of the hospital commission, including the authority to fix salaries, wages or other compensation and to enter into contracts to accomplish any or all of its purposes. The Illinois Appellate Court held this new section to obligate the Board of Commissioners to honor the collective bargaining election agreement. However, the Illinois Supreme Court held the Board of Commissioners could not be required to bargain pursuant to the election agreement and new statute.

The election agreement is valid, and the parties had authority to enter into it under Illinois case and statutory law.[8] The Illinois Appellate Court analyzed the election agreement and held it is not a perpetual contract because it has two ascertainable termination points —the union's decertification and either party's refusal to honor an arbitration award. The Illinois Supreme Court did not overrule this finding. It merely stated that even

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[8] The hospital commission had statutory authority to "... fix all salaries, wages or other compensation, or benefits and working conditions of all employees . . ." and "*. . . to make and enter into contracts to accomplish any or all of its purposes. . . .*" *emphasis added.* Health and Hospitals Governing Commission Act, Pub. Act 76-32; amended by Pub. Acts 76-2015 and 78-925; *Tobin v. Health and Hospitals Governing Commission, supra,* n. 1. This statutory language was replaced by the broad language of Section 10 of the County Hospital's Act. Ill. Rev. Stat. ch. 34 §5020.

if the election agreement has defined termination points, it is, nevertheless, unenforceable. Thus, the court did not hold the contract could be terminated at will, or that it is an invalid contract of perpetual duration.

The court's refusal to enforce the election agreement constitutes an impairment, because the obligation of the contract also includes appropriate remedy. Early contract clause litigation recognized that a subsequent state law affecting the remedy of a contract so substantially as to impair and lessen its value is forbidden by the contract clause. *Edwards* v. *Kearcey,* 96 U.S. 595 (1877). The union has been deprived of a remedy which it legitimately expected at the time the contract was made. Absolute refusal to enforce is not the same as modification of remedy during a clear economic emergency. Cf. *Home Building & Loan Assoc.* v. *Blaisdell,* 290 U.S. 398 (1934). The Illinois Supreme Court's decision forecloses petitioner from pursuing its contract remedies.

This impairment is not constitutional, because it is an unreasonable and unnecessary total destruction of a valid contract. Impairments might be valid if they are reasonable and necessary to serve an important public purpose or merely modify a remedy during an economic emergency. *Allied Structural Steel Co.* v. *Spannaus,* 438 U.S. 234 (1978); *United States Trust Company* v. *New Jersey,* 431 U.S. 1 (1977); *Home Building and Loan Assoc.* v. *Blaisdell, supra.* Although the Illinois Supreme Court did not specify the public purpose it sought to serve, it unreasonably intimated that the election agreement and its bargaining requirement surrender the employer's discretion to establish the terms of employment. To the contrary, the election agreement itself and well recognized principles of collective bargaining adequately protect the

employer's discretion. The court's absolute refusal to enforce was unnecessary because the agreement or judicial recognition of the agreement's own limitations on bargaining could have adequately safeguarded the Court's concern.

The court obviously ignored the unmistakable language of the election agreement. Paragraph 8 of the agreement states the hospital commission "has the full authority and responsibility for directing its operations in determining policy, and that it reserves these rights, powers, authorities, duties and responsibilities." See Appendix D at 22(a). Paragraph 9 of the election agreement implicitly recognizes the obvious — the parties are not required to agree. It states:

> If the parties are unable to agree upon a contract after a reasonable period of negotiations and an impasse having been reached, either party may refer any unresolved matters to a fact finder . . . . the fact finder shall . . . make findings of fact and recommend terms of settlement which terms shall be advisory only. See Appendix D, at 23(a).

A fundamental feature of collective bargaining concepts of this particular relationship is that neither party could be compelled to agree to proposals offered by the other. The very nature of collective bargaining as it has evolved in this country is that neither party may be compelled to agree.[9]

That collective bargaining does not require compulsion is a proposition acknowledged in other states, which like Illinois, do not have comprehensive public employee col-

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[9] Section 8(d), National Labor Relations Act, as amended, 28 U.S.C. §158(d); *NLRB* v. *Insurance Agents' International Union*, 361 U.S. 477 (1960).

lective bargaining laws. *Littleton Education Association* v. *Arapahoe County School District No. 6*, 191 Colo. 411, 533 P.2d. 793 (1976); *Dayton Classroom Teachers Association* v. *Dayton Board of Education*, 41 Ohio St.2d 127, 323 N.E.2d 714 (1975). The dissenting opinion of Justice Simon of the Illinois Supreme Court recognized this principle:

> No terms (of employment) would become effective until the Commission approved them, and the Commission did not have to agree to anything not to its satisfaction. If bargaining broke down, the Commission was free to do as it pleased. 88 Ill.2d at 320; 430 N.E.2d at 1130.

The Illinois Supreme Court has obviously ignored this fundamental principle of collective bargaining in unreasonably construing the election agreement and applying the new statute.

The protection of state or local government discretion is not a sufficient and constitutional reason justifying a contract impairment as distinguished from a modification of a contract remedy. *U. S. Trust Co.* v. *New Jersey, supra*; *Louisiana ex rel. Hubert* v. *New Orleans*, 215 U.S. 170 (1909). The impairment herein is not reasonable because the election agreement provides sufficient protection of governmental discretion and does not require agreement. The Court's sweeping aside of the contract rights does not warrant the traditional deference given by this Court to a state's assessment of reasonableness and necessity. *U.S. Trust Co. of New York* v. *New Jersey*, 431 U.S. at 25-6. This Court has held that a state may not authorize a municipality to borrow money and then restrict indefinitely its taxing power so that the debt cannot be repaid. Such exercise of state discretion is an

obvious violation of the contract clause. *Louisiana ex rel. Hubert* v. *New Orleans, supra. A fortiori,* the Illinois Supreme Court's refusal to enforce the election agreement is an impairment which unconstitutionally and indefinitely postpones the obligations of the contract.

In holding that a public employer could not be ordered to negotiate a collective bargaining agreement, the court failed to distinguish between bargaining *ab initio* and bargaining pursuant to an agreement to recognize and discuss wages, hours and working conditions with an employee representative. This distinction is important to protecting the underlying contract recognition and bargaining rights of petitioners in the instant case, and was recognized by the Illinois Appellate Court, in the instant case, when it held:

> Our ruling in no way interferes with discretionary public policy decisions to be made with regard to this subject area when exercised by the County Board *ab initio.* 91 Ill. App.3d at 1111, 415 N.E.2d at 658.

This is further evidence of the unreasonableness of the Illinois Supreme Court's decision.

The Illinois Supreme Court impairment is also not a necessary exercise of public policy, because a more moderate course of action could have served any of the appropriate policy purposes. In *United States Trust Company* v. *New Jersey, supra,* this Court recognized that a state is not completely free to consider impairing the obligations of its own contract on a par with other policy alternatives, and is not free to impose a drastic impairment when an evident and more moderate course could serve its purposes equally well. 431 U.S. at 31. In the

instant case the Illinois Supreme Court could have enforced the contract recognizing the election agreement's own limitations not requiring agreement or invasion of the county board's discretion. A recognition of a traditional labor law principle that employers may not be compelled to agree as well as the contract's own inherent limitations could have well served the public purpose. Accordingly, the court's total impairment of the contract was unnecessary .

Because the Illinois Supreme Court's decision is not founded upon a fair or reasonable basis, there is no adequate non-federal ground to support it. This Court must inquire whether the state court's decision rests upon a fair or substantial basis. *Broad River Power Co.* v. *South Carolina,* 281 U.S. 537, 540 (1929); *Terre Haute and Indianapolis Railroad Co.* v. *Indiana,* 194 U.S. 579, 589, (1904). The implication that the election agreement delegates responsibility is simply wrong. The election agreement itself provides substantial protection against delegation. The court's decision is so untenable that its application of the County Hospital's Act and refusal to enforce the election agreement is an attempt to decide this case on a non-federal ground, thereby evading this Court's jurisdiction. Even though the constitutional impairment of contract argument was made, the court did not mention it.

CONCLUSION

Free collective bargaining may be created by the employer and employee representatives. Petitioner and the hospital commission attempted nothing more than to establish a fair and democratic system for employee representation and mutual discussions concerning wages, hours and working conditions. The Illinois Supreme Court's application of a statute to impair these contractual rights violates the contract clause and removes from the work place the very essence of democracy which the employees sought to achieve. So long as the employer is not contractually obligated to agree to employee proposals, the election agreement did not detract from management prerogative. The court has, in effect, destroyed collective bargaining for the employees involved. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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